

597191

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE

FIRST AMERICAN TITLE

RECORDING REQUESTED BY:

GRAND PLACE HAYWARD, LLC
C/O Pulte Home Corporation
7031 Koll Center Parkway, Suite 150
Pleasanton, California 94566
Steve Kalmback

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Cleanup Operations Branch

2002405550 09/12/2002 08:30 AM
OFFICIAL RECORDS OF RECORDING FEE: 34.00
ALAMEDA COUNTY
PATRICK O'CONNELL



10 PGS

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VL

SPACE ABOVE THIS LINE RESERVED FOR RECORDER-S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

DE NOVA HOMES SITE

(Re: Grand Place Hayward, LLC, Parcel Nos. 431-0044-026, 431-0044-028, 431-0044-027-02, 431-0044-029-02, 431-0044-029-04, 431-0048-001, 431-0048-002, 431-0048-020-02 and 431-0044-045)

This Covenant and Agreement ("Covenant") is made by and between GRAND PLACE HAYWARD, LLC (the "Covenantor"), the current owner of property situated in the City of Hayward, County of Alameda, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control ("DTSC"). Pursuant to Civil Code section 1471(c), DTSC has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and DTSC, collectively referred to as the "Parties", hereby agree, that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately six and seven-tenths acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is known as the GRAND PLACE HAYWARD, LLC Homes Site. It is located in a mixed commercial, residential, and light industrial area in the City of Hayward. The Site is bounded by the D-Street underpass and multifamily residential to the north, by a railroad right-of-way to the east, by single family residences to the west, and by retail businesses and residences to the south. The Site is more specifically described as Alameda County Assessor's Parcel Nos. 431-0044-026, 431-0044-028, 431-0044-027-02, 431-0044-029-02, 431-0044-029-04, 431-0048-001, 431-0048-002, 431-0048-020-02 and 431-0044-045.

1.02. The Site has been historically used for agricultural purposes. The Site was first developed for commercial and/or light industrial use in approximately 1953. Site occupants included Engineered Instruments, Inc. (1953-1962), Holbrook-Paisley Co. (1964-1965), Vactite Vacuum Coating (1967), and Thermionics Laboratory, Inc. (1962-2000). No detailed information was found regarding the business type or operations of the first three occupants. In city directories, Engineered Instruments was listed as an electronics company and Holbrook-Paisley as packers. Thermionics was a manufacturer of vacuum equipment for physics applications. The primary chemicals used and/or generated by Thermionics included coolants, cutting oils, compressed gases, and solvents including 1,1,1-trichloroethane (1,1,1-TCA) and trichloroethylene (TCE).

1.03. GRAND PLACE HAYWARD, LLC proposed to develop the Site to high density residential. Groundwater will not be a source of drinking water for onsite residents since groundwater is not used for drinking in the City of Hayward. The East Bay Municipal Utility District (EBMUD) supplies all water in the City from the Upper San Leandro treatment plant which accepts water from Upper San Leandro reservoir. EBMUD does not use groundwater as a drinking water supply source.

1.04 GRAND PLACE HAYWARD, LLC has prepared a Preliminary Endangerment Assessment and a human health screening for the Site redevelopment.¹ Based on the existing data and the human health screening, the Site soil meets unrestricted land use standards. However, cancer risk and noncancer hazard calculations indicated that consumption of and exposure to groundwater would pose a significant threat to human health. Groundwater at the Site is found at approximately 50 feet below ground surface. Groundwater at a portion of the Site (the Property) was found to be contaminated with chlorinated solvents. Detected contaminants in the groundwater include TCE (detected up to 890 parts per billion, ppb), and perchloroethylene, PCE (detected up to 33 ppb). The California drinking water

¹ This Preliminary Endangerment Assessment document will remain on file in the DTSC file room.

standards for TCE and PCE is 5 ppb. DTSC concludes that the contaminants in the groundwater present an unacceptable threat to human health and safety.

ARTICLE II DEFINITIONS

2.01. DTSC. "DTSC" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 (a) (1) (C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by DTSC; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5 (a) (1) (C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of DTSC.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7..

3.04. Incorporation into Deeds, Leases and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases and subleases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to DTSC no

later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). DTSC shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS AND OBLIGATIONS

4.01. Soil Management

- (a) No activities that will disturb the soil forty (40) feet below ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by DTSC.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide DTSC written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than forty (40) feet below the ground surface.

4.02. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Installation of wells and extraction of groundwater for purposes other than site investigation and/or remediation without DTSC approval.²

4.03. Non-Interference with Groundwater Monitoring and/or Treatment, Groundwater Monitoring Wells on the Property. Covenantor agrees:

- (a) Activities that may disturb the groundwater monitoring wells (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and approval by DTSC.

²Covenantor agrees to make no use of groundwater and has contracted with the local water purveyor(s) to meet all water needs for Covenantor and will retain all necessary contracts to meet all water needs for the property.

- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the groundwater monitoring wells.
- (c) The groundwater monitoring wells shall not be altered without prior written approval by DTSC.
- (d) Covenantor shall notify DTSC of the type, cause, location and date of any damage to the groundwater monitoring wells, if known. Notification to DTSC shall be made as provided below within ten (10) working days of discovery of any such disturbance. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants, for the particular incident/damage reported.

4.04. Access for DTSC. DTSC and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, remediation, and other activities consistent with the purposes of this Covenant as deemed necessary by DTSC in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for DTSC to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to DTSC for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by DTSC in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to DTSC include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: GRAND PLACE HAYWARD, LLC a California limited liability company
C/O PULTE HOME CORPORATION, a Michigan Corporation, its sole member
7031 Koll Center Parkway, suite 150
Pleasanton, CA 94566

To DTSC: Department of Toxic Substances Control
Northern California
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth

herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

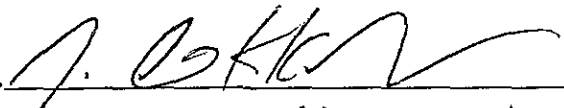
7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: GRAND PLACE HAYWARD, LLC, a California limited liability company

By: PULTE HOME CORPORATION, A MICHIGAN CORPORATION, its sole member

By:


J. STEVEN KALMBACH

Title:

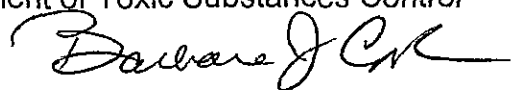
VICE PRESIDENT

Date:

AUGUST 19, 2002

Department of Toxic Substances Control

By:


Barbara J. Cook, P.E.

Title:

Cleanup Operations Branch Chief

Date:

AUG 27, 2002

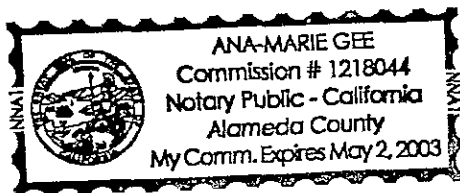
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On August 19, 2002 before me, Ana-Marie Gee
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared J. Steven Kalmbach
Name(s) of Signer(s)

☒ personally known to me -- OR -- ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Ana-Marie Gee
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On August 27, 2002 before me, Kathleen Duncan, Notary Public

personally appeared Barbara J. Cook

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathleen Duncan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

Document Date: 8-27-02 Number of Pages: 7

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Barbara J. Cook

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Chief

Northern California
Coastal Cleanup Operations
Signer Is Representing: Branch
Dept. of
Toxic Substances
Control

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

Lots 1 through 161, inclusive, Parcels A through K, inclusive, Parcels AA through GG inclusive, Tract 7191, filed April 12, 2002, Map Book 263, Pages 79 through 86, inclusive, Alameda County Records.

A.P. Nos. 431-0044-026; 431-0044-028 and 431-0044-027-02
431-0044-029-02, 431-0044-029-04, 431-0048-001, 431-0048-002, 431-0048-020-02 and 431-0044-045